IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

OP.No. 23356 of 1998(S)

OA.119/1997 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. T.N. SANKARANARAYANA IYER, T.C. 40/83,
GANDHARVA BHAVAN, FIRST PUTHEN STREET,
MANACAUD P.O., TRIVANDRUM 695009
2. N.V. RAMAKRISHNA IYER,
T.C. 11/2155, JANAKI MANDIR,
C-17, KANAKA NAGAR, TRIVANDRUM 695003

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.SAJI VARGHESE
SRI.S.SHYAM

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO THE MINISTRY OF FINANCE,
NEW DELHI
2. CONTROLLER AND AUDITOR GENERAL OF INDIA,
NEW DELHI 110002
3. ACCOUNTANT GENERAL (AUDIT)
P.B. NO 5608, TRIVANDRUM 695039
4. CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH, COCHIN 11 REPRESENTED
BY ITS REGISTRAR

BY ADV. SRI.A.SUDHI VASUDEVAN, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

O.P. No 23356 of 1998 - S

Dated: 22nd June 2007

JUDGMENT

Radhakrishnan,J.

This writ petition has been preferred against the order passed by the Central Administrative Tribunal in O.A. No 119 of 1997. First petitioner who was the first applicant before the Tribunal is no more. Arguments were advanced only on behalf of the second petitioner. Second petitioner retired from service as Senior Audit Officer somewhere in the year 1992. Petitioner's complaint was that his junior A. Gopalan was drawing higher salary with effect from 1.1.1988, consequently he is entitled to have the pay fixed at Rs 3300/- as on 1.1.1988, the date on which Gopalan was promoted as Audit Officer. Petitioner's representation to that effect was rejected by Exts. A8 and A13 which were challenged before the Tribunal. Direction was also sought to refix his pay in the cadre of Audit Officer at Rs 3,300/- as on 1.1.1988 and also for consequential

benefits.

2. Respondents resisted the petition stating that the applicant was junior to Gopalan who was promoted as Audit Officer with effect from 3.8.1987 and his pay in the grade of Rs 2375 - 3500 was fixed at Rs 3,300/- with effect from 1.1.1988 under F.R 22 c. Applicant's pay was already stepped up with effect from 1.5.1988 with reference to his junior T.V. Thomas and accordingly applicant was not entitled for stepping up of pay with reference to the next junior, A. Gopalan, in accordance with the Government of India order 24 below FR 22. Further it was also pointed out that Gopalan as well as the applicant were not in the same cadre. Claim for stepping up of pay was rejected by the Department stating that applicant is not entitled to it in accordance with order 24 below FR 22. Reference was made to Note 7 below Rule 7 of the CCS (Revised Pay) Rules, 1986. It is stated that stepping up of pay cannot be granted in violation of the conditions under Rule 7 to both junior and senior belonging to the same cadre.

3. Applicant was promoted as Audit Officer from the cadre of Section Officer whereas Gopalan was promoted as Audit Officer from the cadre of Assistant Audit Officer. It was therefore held that in the

case of senior and junior belonging to different cadres Note 4 below Rule 7 of the C.C.S (Revised Pay) Rules 1986 would not have any application.

4. Counsel for the petitioner laid considerable stress on Ext. P16 communication dated 26.07.1985 and contended that on the strength of Ext. P-16 applicant is entitled to get the benefit of fixationof stepping up of pay on a par with his junior. Ext. P-16 was produced as Annexure 16 before the Tribunal. However, no argument was advanced on the basis of that order before the Tribunal and therefore the Tribunal had no occasion to examine the applicability or otherwise of that order. In such circumstances, this court sitting in writ jurisidction is not justified in examining whether Ext P16 would have any application in the case of the applicant or not. Further, applicant as we have already indicated, retired from service in the year 1992 and at this distance of time this court is not justified in re-examining the issue whether the applicant is still entitled to get the benefit of stepping up of pay on the basis of Ext P16. We also notice that Gopalan was promoted as early as on 03.08.1987 and the O.A was filed only in the year 1997 after the retirement of the petitioner. In such circumstances, we find no

reason to interfere with the order passed by the Tribunal. O.A is therefore dismissed.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-

ANTONY DOMINIC
Judge

22/06/2007
en/

[true copy]

APPENDIX

Petitioner's exhibits:
Ext.P1 - True copy of representation dated 1.8.1994 submitted by the first petitioner before ;third respondent.
Ext.P2 - True copy of the reminder sent by the first petitioner to the 3rd respondent dt 28.2.1995
Ext.P3 - True copy of the reply to Ext P1 dated 23.3.1995
Ext.P4 - True copy of representation submitted by the first petitioner before the third respondent dated 14.6.1995
Ext.P5 - True copy of the forwarding letter issued to the second respondent dated 14.6.1995
Ext.P6 - True copy of ;the letter issued by the third respondent to the first petitioner dated 31.7.95
Ext.P7 - True copy of the representation submitted by the first petitioiner before the third respondent dated 16.8.95
Ext.P8 - True copy of; the order of the third respondent dt 18.12.96
Ext.P9 - True copy of the representation submittedby the second petitioner to second respondent dt 22.10.1993
Ext.P10 - True copy of order of the third respondent dated 5.1.1995
Ext.P11 - True copy of order of the third respondent dated 31.7.1995
Ext.P12 - True copy of the order of third respondent dated 16.8.1995
Ext.P13 - True copy of the order of the third respondent dated 15.10.1996
Ext.P14 - True copy of the order of the second respondent dated 12.5.1989
Ext.P15 - True copy of the order of the third respondent dated 14.6.1999
Ext.P16 - True copy of the order of the second respondent dated 26.7.1985
Ext.P17 - True copy of the order in O.A 119/97 dated 27.8.1998 of the 4th respondent.
Ext.P18 - True copy of the order of second respondent dated 13.6.1987
Ext.P19 - True copy of Central Civil Services (Revised Pay) Rules 1986 published by first respondent.

[true copy]